IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEOFFREY CALHOUN, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:17-CV-530-RWS
CITY OF ATLANTA, et al.,	:	
	:	Also filed in:
Defendants.	:	1:09-CV-03286-TCB
	:	1:11-CV-3398-SCJ
	:	1:15-CV-03303-RWS
		1:15-CV-03307-LMM
		1:15-CV-03296-MHC
		1:16-CV-02909-CAP

ORDER

The City of Atlanta ("the City") is a Defendant in each of the following cases: Calhoun v. City of Atlanta, 1:09-CV-03286-TCB; Anderson v. City of Atlanta, 1:11-CV-3398-SCJ; Croland v. City of Atlanta, 1:15-CV-03303-RWS; Gates v. City of Atlanta, 1:15-CV-03307-LMM; Ruch v. City of Atlanta, 1:15-CV-03296-MHC; and Toole v. City of Atlanta, 1:16-CV-02909-CAP (the "Underlying Cases"). The City, on behalf of itself and all the individually named defendants in the Underlying Cases, filed a Petition for Emergency

Relief ("Petition") [Doc. No. 1] requesting that the Chief Judge of the District Court rule on identified issues in the Underlying Cases. The Plaintiffs in the Underlying Cases ("Plaintiffs") filed a Response to the Petition [Doc. No. 7] and a Motion for Rule 11 Sanctions [Doc. No. 9]. The City of Atlanta filed a Reply Brief [Doc. No. 10], and Plaintiffs filed a Motion to Strike the Reply Brief [Doc. No. 11]. The Petition was assigned to the undersigned for consideration. After reviewing the record, the Court enters the following Order.

As an initial matter, Plaintiffs' Motion to Strike the Reply Brief [Doc. No. 11] is **DENIED**. Plaintiffs challenge the length of the City's initial and reply briefs. Because the City's initial brief was essentially a part of its Petition, the limitation of LR 7.1(F), NDGa. likely does not apply. But even if it does, the Court authorizes the City to use additional pages for both the initial and reply briefs.

Turning to the substance of the City's Petition, all of the Underlying Cases allege misconduct by the Atlanta Police Department ("APD") related to Fourth Amendment protections regarding arrests and First Amendment protections regarding expression and filming police activity. In two of the

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Underlying Cases, Calhoun and Anderson, settlements were reached. The terms of both settlements mandated specific APD reforms. Alleging that APD training was not meeting the specific mandates of the settlement orders, Plaintiffs filed contempt motions in both cases in 2015. The City admitted that it had not met all of the technical requirements of the settlement orders, and contempt orders were entered in the Calhoun and Anderson cases. The Calhoun contempt order included the following provisions:

> 11. The City of Atlanta is directed to comply within 15 days with any reasonable request made by Plaintiffs' counsel seeking records or documents regarding the City's compliance with the Orders of this Court. Any records or documents that would not be subject to disclosure under the Georgia Open Records Act shall be used by Plaintiffs' counsel solely for the purpose of monitoring the City of Atlanta's compliance with the Orders of this Court and shall not be disclosed to the public.
>
> 12. The City of Atlanta shall reimburse Plaintiffs' counsel for any reasonable fees and costs they expend in ensuring compliance with the Orders of this Court, including but not limited to counsel's involvement in the tasks described above. The City of Atlanta shall pay the sums directly to Plaintiffs' counsel upon receipt of itemized accounting of reasonable time and expenses, or submit Plaintiffs' Accounting to the Court for review if the City believes any accounting to be unreasonable. . . .

(Calhoun, [Doc. No. 289] at ¶¶ 11-12.)

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In its Petition, the City raises concerns regarding counsel's monitoring responsibilities in Calhoun and also seeks consolidation of the cases other than Calhoun and Anderson (the underlying cases other than Calhoun and Anderson are hereafter referred to collectively as the "Active Lawsuits"). The City requests the following specific relief:

> 1) the Ruch, Toole, Croland, and Gates Lawsuits be transferred to one Judge, and specifically to either Judge Jones or Judge Batten, the Judges for the Anderson and Calhoun cases, respectively; 2) that a Magistrate Judge or special master be assigned to oversee and manage the discovery processes of the Active Lawsuits; 3) that the discovery and legal determination regarding the 42 U.S.C. § 1983 claims in the Active Lawsuits be consolidated; 4) that there be no change to the current status of Calhoun, as it pertains to Mr. Joseph Whitley serving as a Special Master to monitor and facilitate the City's compliance efforts; and 5) that Counsel be removed as monitors of Calhoun compliance, such that Mr. Whitley is the sole compliance monitor in the Lawsuit.

(City's Brief [Doc. No. 1-1] at 40-41.)

Due to the unique nature of the City's Petition, the undersigned will first address the question of which, if any, of the claims for relief should be addressed in this proceeding. The undersigned concludes that issues regarding the status of counsel as monitors in the Calhoun case and the role of the Special Master in the Calhoun case (City requests nos. 4 & 5) should be addressed by

Judge Timothy C. Batten, Sr., the judge to whom that case is assigned. The undersigned is aware of no good reason why he should interfere in any way in the management of that case.

The City complains that Plaintiffs' counsel are misusing their roles in Calhoun and Anderson in connection with their roles in the Active Lawsuits in such a way as to create a conflict of interest. The City has not specifically requested any action against Plaintiffs' counsel in any of the Active Lawsuits. After reviewing the submissions of the parties, the Court finds no basis for taking any action regarding counsel in the Active Lawsuits. Again, if counsel's conduct runs afoul of any orders in Calhoun or Anderson, the assigned judge should address that conduct in those cases.

As for consolidation of the Active Lawsuits, procedures exist whereby the City may seek consolidation by filing appropriate motions in those cases. Addressing that issue in a separately filed action is not necessary. The judges to whom those cases are assigned will determine whether a special master should be appointed to oversee and manage discovery and whether consolidation is appropriate. Therefore, requests for such action should be filed in those cases.

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Based on the foregoing, the relief requested by the City in its petition is hereby **DENIED**.

Plaintiffs filed a Motion for Rule 11 Sanctions [Doc. No. 9] asserting that the City's petition was filed "for improper purposes of delay and harassment, is not warranted by existing law or a good-faith extension thereof, and is predicated on false statements of fact in briefing." (Pl.'s Motion Doc. No. 7-5] at 1.) Rule 11 sanctions are properly assessed when a pleading: (1) has no factual basis; (2) is not supported by law or a reasonable argument for extending the law; or (3) is filed for an improper purpose. Massengale v. Ray, 267 F.3d 1298, 1301 (11th Cir. 2001). Among the purposes of Rule 11 are to reduce frivolous motions and deter "costly meritless maneuvers." Id. at 1302. In determining whether Rule 11 sanctions should be granted, the Eleventh Circuit "requires a two-step inquiry as to (1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleadings should have been aware that they were frivolous." Baker v. Alderman, 158 F.3d 516, 524 (11th Cir. 1998). "[T]he purpose of Rule 11 is to deter frivolous lawsuits and not to deter novel legal arguments or cases of first impression." Id.

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The City's contention that a conflict of interest exists relies primarily on an exchange that occurred during a meeting held April 25, 2016 in connection with the Calhoun case. During the meeting, the following colloquy occurred:

> MS. SHAHAR: What I hear you say – you know, you talked about Judge Batten's order. And it sounds like you all are seeing yourselves as the team that's going to make sure that order is complied with.
> MR. GROSSMAN: Well, under the May 19th's order, that's our obligation.
> MR. WEBER: Yeah.
> MS. SHAHAR: So essentially on behalf of Judge Batten to be sure that his order is being complied with?
> MR. GROSSMAN: Well, that is our court-ordered obligation and we've been doing it.

(Trans. [Doc. No. 1-2] at 13 (pp. 30-31 of transcript).)

The City interprets this language by counsel as a statement that they have a role as the court-appointed neutral monitors of the court's order. As stated above, the undersigned will leave it to Judge Batten to resolve disputes regarding the role of counsel in monitoring his court order. The undersigned notes the basis of the City's position solely for the purpose of analyzing the Rule 11 issue.

Regarding the Active Lawsuits, the City requests consolidation and/or appointment of a Special Master to assist in discovery. These are not

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unreasonable requests for related cases. Without deciding whether any of the relief sought by the City is appropriate, the undersigned finds that raising these issues was not done for an improper purpose. On the contrary, pursuing an efficient resolution of these cases is appropriate.

Plaintiffs complain that the City suggested consolidation before particular judges. The undersigned ascribes no "improper purpose" to the City's proposal. The intimation that the City expects more favorable treatment from these judges is belied by the fact that each of the two judges suggested by the City has already found the City in contempt in their pending cases. Moreover, when consolidating cases, the assignment is typically made to the judge who is assigned the oldest case. In this instance, that would have been one of the judges suggested by the City.

While the undersigned does not conclude that the City has raised improper issues in its petition, raising these issues through an independent petition submitted to the Chief Judge was procedurally improper. Therefore, the question is whether Rule 11 sanctions are appropriate when the crux of the complained-of conduct is more procedural than substantive. While there would certainly be instances where procedural actions of a party would warrant sanctions, the undersigned finds that the present instance is not one of those. The issues the City seeks to place before the court are not frivolous issues. However, the issues should be addressed in the respective cases by the judges responsible for those cases. Accordingly, Plaintiffs' Motion for Rule 11 Sanctions [Doc. No. 9] is **DENIED**.

Based on the foregoing, the City's Petition [Doc. No. 1] is **DENIED**; Plaintiffs' Motion to Strike Reply [Doc. No. 11] is **DENIED**; and Plaintiffs' Motion for Rule 11 Sanctions [Doc. No. 9] is **DENIED**. The Clerk shall **CLOSE** the case.

SO ORDERED, this 8th day of March, 2017.

RICHARD W. STORY
UNITED STATES DISTRICT JUDGE